

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Commission Review of and Response to the
Federal Communications Commission's Triennial
Review Order Relative to Network Unbundling
Obligations and Related Issues

05-TI-824

**TWTC STATEMENT OF INTEREST, ISSUES OF CONCERN
AND SUGGESTED PROCEDURES**

I. STATEMENT OF INTEREST.

Pursuant to the Notice of Investigation dated July 24, 2003, Time Warner Telecom of Wisconsin, L.P. ("TWTC") hereby submits its statement of interest in the above-captioned docket.

TWTC requests that the following persons be listed on the service list for this investigation:

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II. DESCRIPTION AND EXPLANATION OF ISSUES OF CONCERN.

As the FCC's Triennial Order ("Order") has not yet been released, many issues, including the role of the state commissions in implementing the Order, cannot be identified with certainty. TWTC therefore reserves the right to supplement this initial statement of issues once the Order is released.

The FCC has indicated the outlines of its forthcoming Order in a press release dated February 20, 2003 ("Press Release"). Based on this document, TWTC has identified at least two issues, stated in Captions A and B below, on which it will participate in this docket.

Explanation and identification of sub-issues are provided under each caption.

A. Is the ILEC required to unbundle DS1, DS3, and dark fiber loops and dedicated transport?

The local loop is one of the quintessential bottleneck facilities that the 1996 federal Telecommunications Act requires to be unbundled. As stated in the Press Release, the Order will recognize that CLECs are impaired without access to unbundled local loops and dedicated transport in all instances except where specific "wholesale facilities" and "self-provisioned deployment" triggers have been satisfied. (Press Release, Attachment at 2-3.) The FCC's triggers are designed to make unbundled loops and dedicated transport available unless there is clear and convincing evidence that all operational and economic barriers limiting competitors' ability to access alternative facilities have been overcome and that real high-capacity loop-based and dedicated transport-based competition therefore is possible. The appropriate qualifying criteria for the "wholesale facilities" and "self-provisioned deployment" triggers are not self-evident, however, nor can the necessary factual predicate be left to incumbent LECs to decide. Therefore, it will be critical for the Public Service Commission ("Commission") to put in place: (1) appropriate definitions governing the application of the FCC-defined triggers; (2) a process

for collecting necessary information relevant to the triggers that is reliable and minimally invasive to the affected carriers; and (3) clear procedural requirements that are applicable before an ILEC can cease to offer access to a particular loop or dedicated transport facility as a UNE.

In addition, in order to account for impairment that may occur due to unique or changed circumstances, the Commission should establish a certification process that will allow a CLEC to demonstrate impairment in an individualized situation even if the FCC triggers may be satisfied as a general principle.

Finally, the Commission will need to take into account that under Section 271 of the federal Act, the Bell Operating Companies are required, as a condition of their offering in-region interLATA service, to offer “local loop transmission from the central office to the customer’s premise” and “local transport” unbundled from switching or other services. 47 U.S.C. 271(c)(2)(B)(iv) and (v). There is nothing in these provisions that limit the loops and transport offerings to a particular technology or capacity. Therefore, DS1, DS3, and dark fiber loops and transport must be made available to competitors in order to comply with Section 271, even where the FCC’s non-impairment triggers are met. The Commission should also consider the application of its state law authority to require incumbents to unbundle their networks, an authority that is not limited to particular technologies.

B. Is the ILEC required to provide Enhanced Extended Links (“EELs”)?

In its Press Release, the FCC stated that “[CLECs] may order new combinations of UNEs, including [EELs], to the extent that the requested network element is unbundled.” (Press Release, Attachment at 3.) Competitors will be economically disadvantaged if ILECs can use loop/transport combinations to provide services if competitors do not have access to identical combinations at cost-based TELRIC rates. EELs must be made available to the full extent that

the underlying elements are available, for precisely the same reasons that the underlying elements must be unbundled – because competitors would be impaired without them.

The U.S. Supreme Court has held that ILECs must provide combinations of elements. *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646, 1687 (2002). The Order does not relax that obligation, and the Commission should be proactive in ensuring that the EEL availability rules are enforced. The EEL is an efficient network configuration that lowers barriers to entry, expands the geographic scope of CLEC service (particularly to lower-density areas) and broadens the profile of customers that may take advantage of innovative offerings like the integrated T-1. EELs also preserve collocation space and avoid unnecessary duplication of ILEC transport. For these reasons, broad availability of EELs can promote competition in local services, provided state commissions act to ensure that the FCC’s intent is fulfilled.

III. SUGGESTED PROCEDURES.

TWTC encourages the Commission to review the suggested procedures in documents prepared by the NARUC TRIP task force. Those documents will provide helpful guidance to the Commission as it moves forward with this docket. TWTC also submits that the Commission should adopt the following procedures with respect to the issues raised above and reserves its right to supplement its procedural suggestions for this docket once the FCC’s Order is released.¹

A. Petition Requirements.

The FCC’s presumptive finding of impairment should apply to all loops and dedicated transport facilities. To rebut this presumption, an ILEC would first be required to petition the Commission for a finding of non-impairment on customer location-specific loop or dedicated transport routes. Until the Commission issues a final determination that a particular loop or

¹ At a later date, TWTC will submit additional procedural suggestions with respect to dedicated transport determinations, especially those applicable to sections III.B. and III.C. below.

dedicated transport facility satisfies the FCC's criteria, an ILEC must provision the facility as a UNE without delay.

The Commission should require an ILEC in its petition to list loop or dedicated transport facility routes that the ILEC asserts meet the required criteria, including the presence of at least the FCC-identified number of Qualified Wholesale Providers and/or total Self-Provisioning Carriers on each specific loop or dedicated transport facility route. The Commission should also require that ILECs identify routes by specific customer street address and serving central office. DS1, DS3 and dark fiber loops and transport facilities must be unbundled unless there are the required number of Qualified Wholesale Providers on the loop or transport route. DS3 and dark fiber loops and transport must be unbundled unless there are the required number of Qualified Wholesale Providers or the required number of Self-Provisioning Carriers on the loop or transport route.

B. Wholesale Facilities Trigger (applicable to DS1, DS3 and dark fiber loops).

TWTC proposes that the Commission adopt the following definitions and criteria with respect to the FCC's triggers.

1. **Loop route.** A loop route is the route for the connection between the Relevant (serving) Central Office and the NID or equivalent point of demarcation at a specific customer premises.
2. **Qualified Wholesale Provider.** A Qualified Wholesale Provider must meet the following criteria:
 - Be unaffiliated with the ILEC in any way;
 - Have equivalent access to the customer premises, including in multi-tenant buildings access to the same common space, house and riser and other intra-building wire as the ILEC;
 - Own (*i.e.* have legal title to) the Qualifying Facility on the entire Loop Route (*i.e.* no UNEs or circuits obtained from other carriers);
 - Be collocated in the relevant Central Office;
 - Have sufficient cross-connect/termination capacity available at its collocation space;

- Have sufficient spare network capacity to support wholesale cross-connect (loop) requirements;
- Have additional, currently-installed capacity to provide reasonable access to DS1, DS3 and dark fiber loops served out of the Central Office;
- Have a serving footprint of relevant size;
- Offer access to loops on generally available and nondiscriminatory rates, terms and conditions (*e.g.*, on a tariffed or similar basis), not on an individual case basis;
- Have appropriate processes for receiving, processing and provisioning loop orders; and
- Be financially stable, and not in bankruptcy.

3. Qualifying Facilities must meet the following criteria:

- Must access the customer premises at the NID or equivalent point of demarcation;
- Must terminate in the same Central Office where the ILEC loop would terminate;
- Provide a DS1 or DS3 level transmission path, as requested by the CLEC;
- Be capable of carrying both voice and data traffic; and
- For dark fiber, provide each competitor with the ability to attach electronics that permit it to provide service at the level of its choosing.

The Commission should disqualify any facilities alleged to be operated by a “wholesale” or “self-provisioning” carrier if that carrier continues to purchase more than a *de minimis* number of transmission circuits along the same route from the ILEC. Significant, on-going purchases of ILEC transmission services by a CLEC that has deployed a facility along a route presents prima facie evidence that that facility is not an adequate substitute for ILEC facilities. Accordingly, the CLEC facility would not provide evidence of non-impairment and should be excluded from further analysis.

4. ILEC Obligations.

The ILEC requesting a finding of non-impairment must:

- Permit competitors to order circuits/loops to terminate in all Qualified Wholesale Providers’ collocation space (*i.e.* no ILEC host-type limitations); and
- Provide adequate cross-connect terminations at cost-based rates and enable sufficient capacity expansion.

C. Self- Provisioned Deployment Trigger (applicable to DS3 and dark fiber loops only).

The Commission should establish the following requirements with respect to the Self-Provisioned Deployment Trigger. First, the definitions of Loop Route and Qualifying Facility and the ILEC Obligations described above should apply. In addition, to qualify as a **Self-Provisioning Carrier**, each carrier must:

- Have equivalent access to the customer premises, including in multi-tenant buildings access to the same common space, house and riser and other intra-building wire as the ILEC;
- Be physically collocated at the Central Office;
- Own (*i.e.* have legal title to) the Qualifying Facilities on the entire Loop Route;
- Provide both voice and data service;
- Serve more than a *de minimis* number of the customers served out of the Central Office;
- Have a reasonable amount of additional, currently-installed capacity; and
- Be financially stable, and not in bankruptcy.

D. Certification Process.

It is likely that there will be situations where the FCC Triggers may be satisfied but a particular CLEC still may be impaired without access to the ILEC loop or transport facility due to factors unique to the CLEC or to changed factual circumstances. For example, although a sufficient number of Qualifying Wholesale Providers may be present on a route, these providers may be unable to provide the CLEC the circuit requested due to technical infeasibility or current exhaustion of the wholesale facilities. In these circumstances, the Commission should establish a procedure to modify its impairment finding through a certification that the CLEC would execute and deliver to the ILEC. Specifically, this certification would state that the CLEC had contacted the Qualifying Wholesale Providers identified by the state, but that the carriers were unable to provide the circuit to the particular CLEC due to practical, operational or economic impediments. Following receipt of such a certification, the ILEC must provision a UNE loop or transport facility to the certifying CLEC.


IV. CONCLUSION

As stated above, TWTC has based the contents of this filing on the February 20, 2003 Press Release issued by the FCC describing its forthcoming Order. TWTC therefore reserves the right to supplement and revise these comments once the Order has been issued.

Dated this 4th day of August, 2003.

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